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In Re: Docket No. 510
Application of New Cingular Wireless (“AT&T” or
“Carrier”), Cellco Partnership (“Verizon” or “Carrier”)
and Tarpon Towers LLC. (“Tarpon” or “Applicant”)
for a Cell Tower (“Cell Tower”) at 92 Greens Farms
Rd. Westport CT

Dear CT Siting Council Members Messrs. Morissette, Lynch, Jr., Golembiewski, Nguyen, Quinlan and
Silvestri and Ms. Cooley,

I reference each of you by name and write this in the form of a letter to personalize my effort as
an Intervenor. I have no background with cell towers and had little to add to the technical
presentations. I have read all the relevant materials with care and believe I have a good sense of the
process. It is my hope that each of you will make your final judgment that allows principle and
sensitivity to impact your thinking. While there are arguments that support the Applicant, Tarpon, and
the Carriers, AT&T and Verizon, there is also much to fault in their efforts and to allow each of you to
vote to deny this application.

My words and approach are my own. Nothing has been reviewed or shared with anyone in
Town of Westport government, including of course no inputs or review from Town attorneys Ira W.
Bloom and Nicholas R. Bamonte.

DECISION

I believe the seven of you (of course a vote of three to two, regrettably, will be legally
enforceable) confront the following choices:

Approval - Approve the Application, though most likely with a modest condition or two, for example,
one back-up generator system using natural gas and an environmental oversight process during
construction;

Postpone – Make no decision now and await the final outcome of the effort of many to use the site
on Hales Rd., Westport, and owned by the CT Department of Transportation.

Tower Height – Mandate that the Cell Tower not exceed in height that which is the minimum needed
to service I-95, the primary reason the Applicant and the Carriers seek to construct the Cell Tower.

Denial – Do not approve this Application for any of several sound reasons, most of which relate to the
simple inappropriateness of this site at 92 Greens Farms Road for a 124 feet tall Cell Tower.

LAW, BACKGROUND AND REALITY

The relevant Federal law was passed in 1996 and implemented by State law and subsequent
legal decisions, along with procedures, both substantive and procedural, administered by Siting Council
Staff. While an application for a new cell tower in Connecticut involves much information, the outcome
is usually predictable since those seeking to construct a cell tower, in this case Tarpon, and those
seeking to use a Cell Tower, in this case AT&T and Verizon, have the resources to be successful in their
efforts. The resources of national carriers such as AT&T and Verizon are mammoth. However, those
resources and the usual outcome, Siting Council approval, are dramatically enhanced by the laws and
practices that the Carriers have been able to get passed and implemented. Our State, Connecticut, is

unique in this regard in that it is the only or only one of two States that establish by law that the only body having jurisdiction as to the siting of a Cell Tower is the State Siting Council.

Key Elements of Cell Tower Approvals in Connecticut

1. Substantially any site, any piece of real property in Connecticut may be used for a Cell Tower, subject only to the very modest conditions set forth in the Federal law, e.g. the absence of historic artifacts on the site and certain very limited water movement implications.
2. A private property owner may lease land to a developer for a fee, rent, but the amount of that rent cannot be made known to the public.
3. Radio Frequency issues are negated from consideration, based upon analysis that preceded the passage of the Federal law in 1996, over 25 years ago.
4. The locational aspects of a site are substantially irrelevant, unless a school or commercial day care center is located within , a distance deemed by the law to give rise to adverse health effects to children from the cell tower.
5. The adverse impact on adjacent property values cannot be a basis to deny an application.
6. An adjacent property owner, indeed all property owners or other interests have no meaningful ability to appeal a Siting Council approval of a cell tower, because such persons, to use the legal phrase, “do not have standing” since the law has determined they can incur no acceptable claim of damage.
7. Diminished Property Values, no matter how great, are not a basis to challenge a site for a cell tower.
8. No Connecticut Town may raise challenges based upon its zoning or environmental regulations. Indeed, no town in Connecticut has the legal ability to cause a change in a Cell Tower site request as part of even reasonable efforts of the town to preserve its beauty, aesthetics and a quality of life. Such efforts would be embedded in efforts to locate cell towers in areas that do not dramatically affect the beauty of an area and the accompanying environmental and aesthetic interests of a town, its leaders and residents. The law too often appears to dismiss all of those fundamental interests.
9. The Staff of the Siting Council appears to conduct no independent research as to facts and materials submitted by applicants and carriers. Some good questions are asked by each of you, but my guess is those reflect your general knowledge and experience and not any serious effort to determine accuracy and alternative analyses, tasks that the Siting Council Staff could perform if they had the authority and the resources.
10. There is no reasonable way for a town, an intervenor or anyone else to access records of prior decisions that could be highly relevant, for example the number of Siting Council denials and the reasons for those denials and the number of approvals of cell towers that had elements similar to 92 Greens Farms Rd, for example a small site in the middle of an AA residential zone that is also a gateway to the waters of Long Island Sound and beaches. Siting Council decisions are not indexed. Hence, important information as to outcomes and relevant facts can only be assessed by going through hundreds of cases for a massive number of Connecticut towns. If Court decisions under our legal system were accounted for in a similar manner, namely not accounted for, all would say that was a travesty and violated principles of due process.
11. The process appears to be one in which financially interested parties, the applicant and the carriers, supported by their own research and financial or other interests, for example, marketing, locate a site for a new Cell Tower and then pursue that effort. That pursuit, that effort appears to reflect the reality that substantially all, important aspects of the process are driven by the applicants and carriers. The Siting Council listens and asks questions, but not much more. The public participates through, in this case one, public hearing, and the Town and intervenors participate as they desire and can afford. There is no true judge, no true jury, no

true adversarial system unless the Town or a wealthy intervenor commits money and resources to raise challenges. Politics can also play a role, again, something not present in a true effort to adjudge a very serious matter.

12. The true need for a new Cell Tower is often obscured by the fact that the law supports competition, which means that even if cell service, indeed streaming services as well, are adequate and available from other carriers, other means, such facts cannot even be introduced as relevant. That legislative judgment is simply terrible and has direct relevance to the Cell Tower for 92 Greens Farms Rd.

THIS SITE – 92 GREENS FARMS ROAD

The following is a brief review of the Site, with reference to facts that should and, in several instances, could be relevant to each of you as you cast your votes on this Application.

Site – 92 Greens Farms Rd. is in a one acre, AA residential zone. A single-family home is located on the site, but, I believe, the property owners have rented the home and property to others. It is located within the Greens Farms area of Connecticut, an historic district comprising older and newer homes, large numbers of trees, rolling terrain, streams and, in most cases modest roadways. The Westport Historic Commission has submitted to you a well written and accurate description of this Greens Farms area. Simply put, a 124 feet cell tower should never be permitted. I believe the legal term that has relevance is

“the site is not in harmony with the neighborhood.”

Property Owner – A lease was entered into in September 2013 with the owners of 92 Greens Farms Rd. At that time, the neighbors understood the owners confronted a long-term financial issue pertaining to their child which caused the parental owners to do what is rarely done, make their private residential property available for a cell tower in order to generate a long-term income stream. The lease, while is included as an exhibit in the #510 file, has the payment terms redacted. The Applicant and the Carriers did want any among the public to know the amount of that stream. I believe that is a topic of legitimate public interest. I assume it will be disclosed by the property owner when the Westport Town Assessor reassess this property to reflect its use for a commercial purpose that generates income. The public would have liked to have learned that income number in case there was an opportunity to work with the owner for a different solution than the Cell Tower. The lease also includes extensive renewal provisions and many of us wonder if the initial reason for the lease, an income stream to address a young child’s problem, remains relevant nine years later.

Environment – The Westport Conservation Commission has raised many legitimate objections to and concerns with this site relating to water, drainage and impacts upon Long Island Sound. It will be up to each of you to assess whether that analysis must be ignored or can be viewed as relevant.

Radio Frequencies – All know the provisions of the law. All also know that the science as to harms from radio frequencies from cell towers continues to evolve. Each of you know from my questions that the FTC has been directed by a fairly recent court case to review its analysis of the impacts of radio frequencies from cell towers. [ENVIRONMENTAL HEALTH TRUST ET AL. vs. THE FEDERAL TRADE COMMISSION AND THE UNITED STATES OF AMERICA, U.S. District Court, 8/13/21, No. 20-1025] I had hoped that one or more members of the Siting Council would have been interested in the status of that review by the FTC. I would have hoped that Siting Council Staff would have pursued the matter. In neither case, was my hope realized. We all know of the dramatic increases in brain cancer over the past many, many years.

We also know that a cell tower cannot be sited if within 250 feet of a school or commercial day care center. Each of you also know that an almost abutting neighbor to 92 Greens Farms Rd., Scott Mikuszewski and his wife Vanessa Simon, have a baby girl borne on March 3, 2022. Her name is Zoe

Atlas. The adverse health consequence of that reality appear to have no written support in the law and, yet, the law acknowledges that a cell tower within 250 feet of a school or commercial day care center poses a risk to the children attending such a facility. Why is there a different rule if only one child is involved?

If I were Scott, I would sell my Greens Farms Rd. home. The sale would probably be at a loss due to the impact of the Cell Tower on property values. Nevertheless, my concern would be for Zoe Atlas, whether it could be brain cancer or some other tragic consequence of a new born living so close to a cell tower. In fact, were I an executive with Tarpon, AT&T or Verizon, I would have immediately ceased to pursue this site as soon as I learned of the birth of Zoe Atlas. As a lawyer, long retired, I would also have addressed this matter if I represented those companies, notwithstanding the likely loss of legal fees.

Property Values – A no brainer, they will decline once the Cell Tower is approved, then built. The relevance, I leave that to each of you. Your Siting Council directives advise all that a decline in property values is not relevant. Possibly, you should consider wearing a different hat, that of a typical citizen of Connecticut.

Aesthetics – Cell towers are ugly and especially so when located on a pristine site within a single family home residential zone. Cell Towers are even more offensive when they are sited along a gateway for automobiles, walkers, runners, cyclists and others who approach the Westport and State of Connecticut beaches of Long Island Sound that are so close to 92 Greens Farms Rd. The Cell Tower will loom far above the many trees in the area, with that presence even more dramatic and ugly during the months that the leaves are off the trees. At some point, all will also view these ugly cell towers as dinosaurs.

Need – This topic, probably the crucial one, is fraught with uncertainties and problems. Those begin with the basic Siting Council process. As noted above, that process is inherently flawed in that the sides are not in balance. Indeed, one side, that which may seek to produce the most desirable result is hampered by a large number of procedural and substantive restrictions. The process simply does not provide for a full and clear understanding of need.

In the case of 92 Greens Farms Rd., Tarpon and AT&T decided there was a compelling need eight years ago. Yet, for reasons truly unknown, AT&T changed its mind and decided not to proceed. I have sought good answers as to that choice, but was only told that it was a capital marketing decision based upon conditions existing at the time and, may I add, AT&T's management and other factors probably irrelevant to the public interest. However, a lease was obtained from a private property owner nine years ago and that lease now becomes the basis for proceeding.

The true need for service is acknowledged clearly to be I-95, namely streaming services for the cars that speed along that interstate. At this point, we do not know of the alternatives available right now from other carriers along I-95. We do not truly know the distance along I-95 during which, probably at most, two minutes, streaming services are not available. We do not know the financial model that causes AT&T and Verizon to address this speculative need. Again, what we do know is that the Cell Tower is mostly about I-95. That reality does not sit well with nearly all in Westport.

As to non I-95 issues, here again, the Siting Council appears to rely, without serious challenge, upon the analysis, the submissions of Tarpon, AT&T and Verizon. We have learned that the number, the percent of dropped calls is tiny, apparently a bare fraction above the "acceptable" standard. We also learned nothing about who came up with the "acceptable" standard, as well as who established the guidelines as to when an applicant and a carrier have supportable justification to assert inadequate service. Possibly, most galling is the use of modeling, not actual experience. From the hearings we know that there are people within the area of "inadequate service" who do not have inadequate service. Yet, the Applicant and the Carriers can assert that does not matter, it is the use of modelling that applies, not real-life experience.

Then there is the availability of alternatives. Yes, we all know the law suggests that the present availability of service, whether from cable, land lines, other carriers, is for terrible reasons not permitted to be discussed. Even now, Frontier Technologies, has substantially completed the wiring requirements for all of Westport. As of three days ago, I received a brochure from Frontier Technologies declaring

“FRONTIER FIBER IS HERE”

“FIBER INTERNET GIG SERVICE”

“Connecticut, new ultra-fast internet has arrived. Stream with 25x faster upload speed than cable”

All of these, almost tragic elements, involving coverage and should not and I believe need not be accepted by each or any of you. Your task should be broader, more thoughtful and more sensitive to the simple fact that the Cell Tower at this pristine and important location is not justified by the asserted need.

WHAT TO DO, WHAT SHOULD EACH OF YOU DO

If I was a member of the Siting Council, I would first ask myself if I felt comfortable in denying an approval of the Cell Tower. I would ask myself if the law and the submissions by Tarpon and AT&T and Verizon afforded me no flexibility to deny this application. If as such a Council member I conclude I had no choice but to vote to approve, I would take dramatic action. I would resign from the Siting Council. I would also issue a statement as to the reasons for my resignation. In all likelihood I would focus on the undesirable outcomes that the present Siting Council law and practices produces. I would do that whether I had served for many years or a short period of time as a member of the Siting Council. I would be saying,

“enough is enough”, I do not want to engage in such decisions if the outcomes are predetermined and do not allow sufficient discretion to do the right thing. I no longer can tolerate the circumstances which I confront under Federal and Connecticut law”.

If, as I hope, each of you will feel comfortable in considering a vote to deny. If so, I would then review the facts, the suppositions, the unchallenged assertions and the self-serving answers and testimony. I would think carefully about all the very good reasons, both technical and reflective of sound policy, to deny approval. I would weigh particularly heavily the aesthetic, environmental and quality of life concerns. I would challenge the need assertions. Finally, I would at least consider how I would feel if I lived in Westport and how the Siting Council is perceived by the general public.

That is what I ask. How you come out, how you vote, I know not. What I do know is that the Cell Tower at 92 Greens Farms Rd. is not truly needed and that it will bring ugliness to our lovely town of Westport. For me, it is finally time for the Siting Council to deny a request for a new cell tower in an area in which it simply does not belong.

Sincerely,

Don Bergmann

Donald L. Bergmann